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8 UNITED STATES DISTRICT COURT

9 Northern District of California

10 Oakland Division

11 KELORA SYSTEMS, LLC, No. C 11-01548 CW (LB)

12 v. Plaintiff,

13 TARGET CORPORATION, *et al.*,

14 Defendants.

**15 ORDER RE 11/2/2011 DISCOVERY  
LETTER**

[ECF No. 405]

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**I. INTRODUCTION**

17 The district court has referred all discovery matters in the above-captioned patent case and the  
18 related cases to the undersigned. Referral Order, ECF No. 333 at 2.<sup>1</sup> On November 2, 2011, Kelora  
19 Systems, LLC and Defendants<sup>2</sup> submitted a joint discovery letter in which Kelora seeks to compel  
20 Defendants to produce documents in response to discovery requests for websites that were not  
21 identified in Kelora's infringement contentions. ECF No. 405 at 1. After conducting a telephonic  
22 hearing, the court denies Kelora's motion to compel because its requested discovery undercuts the  
23 purpose of Local Patent Rule ("LPR") 3-1.

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**II. FACTUAL BACKGROUND**

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Kelora is the owner by assignment of all right, title and interest in U.S. Patent No. 6,275,821

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<sup>1</sup> Citations are to the clerk's electronic case file (ECF) with pin cites to the electronic page numbers at the top (as opposed to the bottom) of the page.

<sup>2</sup> Defendants are Amazon.com, Inc., Costco Wholesale Corp., Hewlett-Packard Co., Office Depot, Inc., and Target Corp.

1 (“‘821 patent”), which is entitled “Method and system for executing a guided parametric search” and  
2 was issued by the U.S. Patent & Trademark Office (“PTO”) on August 14, 2001. Second Amended  
3 Complaint, ECF No. 334 at 3. The PTO issued a reexamination certificate for the ‘821 patent on  
4 November 2, 2010. *Id.* The patent claims a “process for identifying a single item from a family of  
5 items” that is run on a single, local computer or over the internet. ECF No. 330-4 at 2-3.

6 On November 8, 2010, Kelora filed suit against 20 defendants in the Western District of  
7 Wisconsin. This action was subsequently transferred to the Northern District of California (*Kelora*  
8 *Systems, LLC v. Target Corp., et al.*, CV 11-1548 CW).

9 On November 2, 2011, Kelora Systems, LLC and Defendants submitted a joint discovery letter  
10 in which Kelora seeks to compel Defendants to produce documents in response to discovery requests  
11 for websites that were not identified in Kelora’s infringement contentions. ECF No. 405 at 1.

### 12 III. DISCUSSION

13 Kelora argues that Defendants must produce documents in response to discovery requests for  
14 websites that have not been identified in Kelora’s infringement contentions. ECF No. 405 at 1.  
15 Kelora accuses Defendants of infringement based on their alleged “guided parametric search  
16 methods,” and argues that this claim is not confined to the websites listed in its LPR 3-1 disclosures.  
17 ECF No. 405 at 1 (citing *Advanced Micro Devices, Inc. v. Samsung Electronics Co.*, 2009 WL  
18 1834147, \*3 (N.D.Cal. Jun 24, 2009)). At the hearing, Kelora noted that LPR 3-1 is written in the  
19 disjunctive and contended that it did more than was necessary because it identified the method and  
20 examples of sites implementing it. Additionally, Kelora argues that LPR 2-5 specifically states that  
21 the requirement of 3-1 disclosures is not a basis for objecting to discovery requests, aside from  
22 certain exceptions that are not relevant here. *Id.* at 2. Kelora also contends that the requested  
23 discovery may lead to evidence related to the patented method at issue as practiced by Defendants  
24 on sites identified in the 3-1 disclosures (e.g., to establish willfulness or to determine a reasonable  
25 royalty). *Id.* at 2-3. Kelora further contends that it has identified the infringing methods, which are  
26 not limited to infringement on specific websites and, therefore, no amendment to the 3-1 disclosures  
27 must be made. *Id.* at 3. Additionally, Kelora argues that not all of the websites are public or are  
28 clearly associated with Defendants, which provides good cause for amending the 3-1 disclosures.

*Id.*

1 Defendants counter that Kelora's argument ignores that there are many different ways to  
2 implement what might be considered "guided parametric search," including via different hardware  
3 and software. *Id.* at 4. Defendants also note that LPR 3-1 requires the "specific identification" of  
4 the method that allegedly is being infringed. *Id.* According to Defendants, here, Kelora is  
5 effectively asking Defendants to guess at which other websites are encompassed by the term "guided  
6 parametric search." *Id.* This defeats a central purpose of LPR 3-1, which is to "make discovery  
7 manageable." *Id.* (citing *Bender v. Freescale*, No. 09-1156, 2010 WL 1689465, at \*3  
8 (N.D. Cal. Apr. 26, 2010)).

9 The court agrees with Defendants. In *AMD*, AMD sued Samsung for allegedly infringing on a  
10 method patent that related to the formation of contacts in semiconductor devices. 2009 WL  
11 1834147, at \*1. AMD did not accuse Samsung processors of infringing this patent but, instead,  
12 accused only Samsung's memory products in its preliminary infringement contentions. *Id.* at \*3.  
13 Samsung moved for a protective order with regard to AMD's request for information about the  
14 processors. *Id.* Samsung claimed that AMD was not entitled to discovery because the processors  
15 were not named in the preliminary infringement contentions. *Id.* Samsung also claimed that the  
16 request was unduly burdensome because the processors include many different types of products.  
17 *Id.* The district court rejected Samsung's first argument, finding that Samsung had sufficient notice  
18 because the identical process was used in each of the products. *Id.* The district court rejected  
19 Samsung's second argument because only a limited set of documents was requested and there was  
20 no need to repeat a deposition. *Id.* But the case is distinguishable because: (1) the *AMD* case was  
21 governed by the old local patent rules; (2) Kelora could have determined whether the public  
22 websites infringed on its patents without needing any discovery and should have identified them in  
23 accord with LPR 3-1(b)'s requirement that the allegedly infringed method be identified as  
24 specifically as possible; and (3) AMD identified a specific manufacturing process that was  
25 identically deployed across products in contrast to the different hardware and software  
26 implementations that allegedly infringe on the method at issue in this case.

27 The court finds that, given the facts in this case, the goal of LRP 3-1, which is to make discovery  
28 manageable, is best served by denying discovery for instrumentalities that were not accused in the  
preliminary infringement contentions. *See Bender*, 2010 WL 1689465, at \*3; *Oracle America, Inc.*

1 *v. Google Inc.*, No. C 10-03561 WHA, 2011 WL 4479305, at \*2 (N.D. Cal. Sept. 26, 2011); *Shared*  
2 *Memory Graphics LLC v. Apple Inc.*, No. C-10-02475 MMC (JSC), 2011 WL 3878388, at \*6-\*7  
3 (N.D. Cal. Sept. 2, 2011). As these cases and local patent rules make clear, the defendants should  
4 not have to guess as to which of its public websites are encompassed by Kelora's request,  
5 particularly where (1) it should not have been burdensome for Kelora to identify the sites, (2) it is  
6 unclear that the request was sufficiently specific given that the term "guided parametric searches" is  
7 in dispute, and (3) the websites use different hardware and software to implement the allegedly  
8 infringing methods.

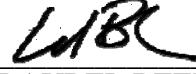
9 **IV. CONCLUSION**

10 For the foregoing reasons, the court denies Kelora's motion to compel. If Kelora intends to  
11 pursue discovery on websites that it did not identify in its infringement contentions, it should first  
12 seek leave to amend its infringement contentions under LPR 3-6.

13 This disposes of ECF No. 405.

14 **IT IS SO ORDERED.**

15 Dated: November 9, 2011

  
16 LAUREL BEELER  
17 United States Magistrate Judge  
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